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STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

In the Matter of

WHITE PINE COUNTY/CITY OF ELY
INTER-LOCAL COMMITTEE;
INTER-LOCAL ADVISORY COMMITTEE

Attorney General File No. 12-006

I.

BACKGROUND

This opinion is based on facts confirmed during this Office’s investigation of an Open Meeting Law (OML) complaint received March 27, 2012 from Mr. William A. Ward alleging a violation of statutory meeting requirements by the *Ely City Council and White Pine County Commission Inter-Local Agreement Team* (“Team”). NRS 241.015, 241.020 and NRS 241.035. This Office has jurisdiction to investigate OML complaints and to seek civil remedies, including injunctive relief, to require compliance with the OML, or to prevent violations of the OML. A criminal misdemeanor penalty and a monetary penalty are also authorized relief in any court of competent jurisdiction. NRS 241.037; NRS 241.040.

II.

FINDINGS OF FACT

This Office subpoenaed written statements from Team members, from Sheriff Watts, and three city/county department heads—Ross Rivera, Dave Hendrix, and Mike Simon. We also received a written report from both the White Pine County District Attorney Kelly Brown and from Ely City Attorney Kevin Briggs. Additional discovery requests were made to both the City and County through the District Attorney and the City Attorney’s offices. Both the District Attorney and City Attorney cooperated fully with this investigation.

Three members, a quorum, of the *Ely City Council and White Pine County Commission Inter-Local Agreement Team* (“Team”) attended a meeting on March 21, 2012 called by White Pine County Sheriff Dan Watts with three city/county department heads (staff). The Sheriff’s meeting was another in a series of monthly meetings to discuss logistics, scheduling, and other details for possible merger, consolidation or integration proposals which were to be

1 provided later to the Team. But, three Team members, a quorum, attended Sheriff Watt's
2 department head meeting without posting a Team meeting Notice and Agenda as required by
3 NRS 241.030. The investigation revealed participation by the three Team members in making
4 scheduling decisions, although two of the three adamantly deny participation. No one
5 recorded the meeting nor were minutes kept as required by NRS 241.035.

6 On March 21, 2012 it was decided to have staff present a plan or concept of
7 consolidation or merger of the paid EMS/Fire staff from the City and County by May 1, 2012 to
8 the Inter-local Committee. This decision was made without formal vote; it was decided by
9 discussion or consensus among the seven attendees.

10 III.

11 ISSUES

12 1. WHETHER THE *ELY CITY COUNCIL AND WHITE PINE COUNTY*
13 *COMMISSION INTER-LOCAL AGREEMENT TEAM* "CURED" OR TOOK CORRECTIVE
14 ACTION SUFFICIENT TO AVOID AN ACTION BY THIS OFFICE.

15 2. WHETHER A QUORUM OF THE *ELY CITY COUNCIL AND WHITE PINE*
16 *COUNTY COMMISSION INTER-LOCAL AGREEMENT TEAM* WHICH MET ON MARCH 21,
17 2012 DID SO WILLFULLY AND WITH KNOWLEDGE THAT SUCH UNNOTICED MEETING
18 OF A QUORUM WAS UNLAWFUL.

19 IV.

20 DISCUSSION

21 1. WHETHER THE *ELY CITY COUNCIL AND WHITE PINE COUNTY*
22 *COMMISSION INTER-LOCAL AGREEMENT TEAM* "CURED" OR TOOK CORRECTIVE
23 ACTION SUFFICIENT TO AVOID AN ACTION BY THIS OFFICE.

24 The *Ely City Council and White Pine County Commission Inter-Local Agreement Team*
25 noticed a public meeting for April 6, 2012 in an effort to "cure" any violation which might have
26 arisen from the March 21, 2012 meeting of a quorum of the Team with the Sheriff and three
27 city/county department heads. Minutes of the April 6, 2012 meeting were provided. We
28 reviewed the minutes and conclude that the meeting was effective corrective action which the

1 OML Manual recommends that public bodies undertake when a violation of the OML occurs or
2 may have occurred. See NEVADA'S OPEN MEETING LAW MANUAL, § 11.01 and § 11.02 (11th ed.
3 2012).

4 The April, 6, 2012 meeting minutes show that the Team met in open session at
5 7:30 a.m. It conducted public comment, then the Team discussed the agenda item:
6 "Discussion/for possible action -- Possible consolidation of EMS and Fire Protection Services
7 in the City of Ely and portions of White Pine County." Even though 7:30 a.m. is very early in
8 the morning and on Friday, a workday; and even though it is unlikely there was a crowd of
9 public there to hear and then comment about their elected officials' decision to plan to
10 consolidate city and county EMS/Fire services, a vitally important governmental service; we
11 cannot say that selection of this time was in violation of the spirit of the OML. The only public
12 comment during this open meeting was from Laurie Carson, who is an elected official on the
13 Board of County Commissioners.

14 Nevertheless, the minutes compare favorably with subpoenaed statements from the
15 city/county division chiefs which described the discussion and consensus arrived at on
16 March 21, 2012. Since there was neither a recording nor minutes taken of this meeting, we
17 have relied on statements of each attendee to resolve this complaint.

18 These statements made it clear that the quorum of the Team made the decision about
19 merger/consolidation and schedule presentation to the Inter-local Committee. Discussion also
20 included, to a limited degree, logistical issues. Team members essentially agreed on a
21 merger plan to be developed and presented to the Inter-local Committee by June 1, 2012.

22 The April 6, 2012 open meeting did not appear to be a rubber stamp of the March 21,
23 2012 meeting, or any of the other prior meetings of Staff on this subject, rather all members
24 discussed the scheduling and to some extent the logistics of consolidation so as to ensure
25 that the very important volunteer network of emergency services was included in planning.

26 A motion was made to allow the "four chiefs and the Sheriff to make out a plan" for
27 consideration by the City Council and the Board of Commissioners on June 1, 2012. It carried
28 unanimously.

1 An additional period of public comment was then called. Laurie Carson, an alternate to
2 the Team, submitted exhibits for the Team to use for future presentation to the governing
3 bodies.

4 **2. WHETHER A QUORUM OF THE *ELY CITY COUNCIL AND WHITE PINE***
5 ***COUNTY COMMISSION INTER-LOCAL AGREEMENT TEAM WHICH MET ON MARCH 21,***
6 **2012 DID SO WILLFULLY AND WITH KNOWLEDGE THAT SUCH UNNOTICED MEETING**
7 **OF A QUORUM WAS UNLAWFUL.**

8 Resolution of this issue is more complex and difficult. Each member of the quorum of
9 the Team which met on March 21, 2012 with the Sheriff and three department heads was
10 asked in subsequent discovery to explain why they met despite the obvious presence of a
11 quorum of the Team and despite the absence of publication of an agenda and notice.

12 The Team statements addressing this question were short. Commissioner Lemich's
13 statement admitted attending but said he did not know that Commissioner Lampros and
14 Councilman Derbidge would also attend. He stated he did not communicate with staff or the
15 other committee members while there.

16 Councilman Derbidge stated that Commissioner Lampros conducted the meeting; he
17 attended only as an observer. He also said that no vote was taken, nor was there a
18 consensus among the elected officers present. Finally he thought that this meeting, even with
19 a quorum present, did not need an agenda/notice.

20 Chairman of the Board of Commissioners and the head of the White Pine County Fire
21 Department, John Lampros, stated in response to our inquiry as to why a quorum met without
22 the benefit of notice or agenda that he was asked to attend a meeting of staff working on
23 details of consolidation. He did not know a Team quorum would be present so he did not
24 consider an agenda. He said it did not occur to him that the meeting of a quorum with the
25 Sheriff and others could have been a violation of the OML.

26 But statements from the other attendees at the March 21, 2012 meeting all described a
27 meeting where each member of the Team quorum not only participated in discussion, but they
28 also made the decision about pursuing a merger (despite this issue having been subject of

1 review for the past year), scheduling the merger and requiring Staff to provide the plan to the
2 Inter-local Committee by June 1, 2012.

3 Statements reveal there was discussion among all seven attendees about
4 consolidation or merger of the White Pine County and City of Ely EMS/Fire Emergency
5 Services and that the decision to pursue merger was arrived at by consensus.
6 NRS 241.015(1)(a)(b) defines "action" as "a decision made by a majority of the members
7 present during a meeting of a public body" and also as a "commitment or promise." It matters
8 not that no formal vote was taken by the Team quorum, nor does it matter that each member
9 of the quorum denied deliberating with the other two members of the quorum. The totality of
10 the evidence persuades us that the Team quorum participated in making the decision to
11 pursue the merger plan whether it was by commitment or promise or informal vote and that
12 this process and the meeting constituted a violation of the OML, NRS 241.015 and
13 NRS 241.020.

14 One of the statements in response to our discovery request said that Councilman
15 Derbidge presented a plan to the group, another statement said: "it was agreed upon to have
16 the two staffs present a plan by May 1, 2012. There was no vote taken. It was decided by
17 discussion of the matter."

18 Another statement was more specific about the role of the quorum of the Team:

19 Commissioner Lemich stated he liked that idea [merger with each
20 entity operating on their budgets, under one command and one
21 location for initial response] and said just do it. Commissioner
22 Lampros stated he thought it was the best idea thus far and do it
and get it done. A dead line date was then initiated to do the
merger.

23 Finally, another statement summed up the process of decision by the quorum:

24 I was then advised by Mr. Lampros and Mr. Lemich and
25 Mr. Derbidge that we were to come up with a plan to merge the
26 two groups, which I interpreted to be County and City, into one
27 group and have a plan presented to them and that the merger
would take place on June 1, 2012. We were instructed to present
the plan to the Inter-local Committee and they would approve it.

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V.

CONCLUSIONS OF LAW

1. WHETHER THE *ELY CITY COUNCIL AND WHITE PINE COUNTY COMMISSION INTER-LOCAL AGREEMENT TEAM* "CURED" OR TOOK CORRECTIVE ACTION SUFFICIENT TO AVOID AN ACTION BY THIS OFFICE.

The *Ely City Council and White Pine County Commission Inter-Local Agreement Team* quorum met on March 21, 2012 in violation of NRS 241.020 and participated in decision making in violation of NRS 241.015(1), but their meeting on April 6, 2012 effectively "cured" the violations so that this Office will not pursue further action under this complaint.

2. WHETHER A QUORUM OF THE *ELY CITY COUNCIL AND WHITE PINE COUNTY COMMISSION INTER-LOCAL AGREEMENT TEAM*, WHICH MET ON MARCH 21, 2012, DID SO WILLFULLY AND WITH KNOWLEDGE THAT SUCH UNNOTICED MEETING OF A QUORUM WAS UNLAWFUL.

The evidence is conflicting. Two members, Councilman Derbidge and Commissioner Lemich, flatly stated they were at the March 21, 2012 meeting as observers only. But statements from other department heads present compelling evidence that all members of the quorum participated in making a decision to schedule a merger of EMS/Fire services to be presented to the Inter-local Committee as early as May 1, 2012 and that the merger could begin with a 90-day trial period as early as June 1, 2012, if approved by the governing boards. While the evidence is conflicting and tends to show that decisions were made by all involved, we do not find a knowing or willful violation of the OML by the Team Members. NRS 241.040(4).

There is support in NEVADA'S OPEN MEETING LAW MANUAL (11th ed. 2012) for at least two members' statement that they attended only as observers. (OML Manual, § 5.12 (11th ed. 2012)). This section allows a quorum of a public body to attend a meeting of its own standing subcommittee, but there can be no participation, comment, questions, or deliberation.

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1 The OML Manual at § 5.12 also forbids the gathering of a quorum at any meeting
2 where discussion, deliberation, and/or decision making takes place unless it meets with notice
3 and agenda in accordance with NRS 241.020(2).

4 This Office previously issued an Opinion regarding the White Pine County/City of Ely
5 Inter-local Committee and its negotiating teams (AG File No. 08-014, July 2, 2008). In the
6 opinion, at page 10, we cautioned both the Board of Commissioners and the City Council
7 against attending staff negotiations during the police/fire negotiation process.

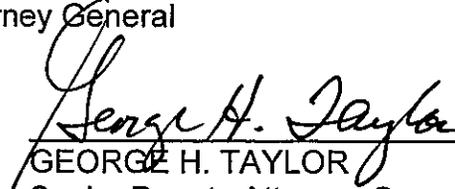
8 There is nothing in this record which characterizes the Team as a standing
9 subcommittee of the Inter-local Committee; nevertheless, we will not take action under
10 NRS 241.040 because the evidence regarding whether the Team acted willfully and with
11 knowledge that they were violating the OML is conflicting. We warn these Team members
12 about participating in discussions while in attendance at subcommittees or in any meeting
13 without notice and agenda where a quorum is present. There must be strict compliance with
14 the OML.

15 We consider this warning to comply with the OML prohibition against meeting without
16 notice and agenda, and to observe the prohibition against a quorum attending subcommittee
17 meetings unless it is a standing subcommittee, to be our last warning to this public body. We
18 will not hesitate to take further action in the future should a similar violation occur. This
19 opinion and the 2008 opinion referenced above provide the necessary foreknowledge to avoid
20 a future violation.

21 DATED this 18th day of July, 2012.

22 CATHERINE CORTEZ MASTO
23 Attorney General

24 By:



25 GEORGE H. TAYLOR
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CERTIFICATE OF MAILING

I hereby certify that I am employed by the Office of the Attorney General of the State of Nevada, and that on this 18th day of July, 2012, I mailed a copy of the Findings of Fact and Conclusions of Law, by mailing true copies by U.S. Mail to:

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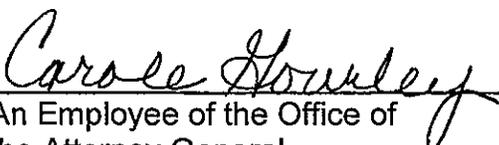
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